

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN J. MCCARTHY
Petitioner

v.

WARDEN, USP LEWISBURG,
Defendant

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: CIVIL NO. 1:15-CV-026
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O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On January 6, 2015, John McCarthy, a prisoner at United States Penitentiary Lewisburg, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). In his petition, he challenged the calculation of his prison sentence and the outcomes of various disciplinary proceedings. (*Id.*). On March 9, 2015, concluding that McCarthy's claims were barred by the abuse of the writ doctrine, Magistrate Judge Carlson recommended that we deny the petition. (Doc. 5). McCarthy objected to the recommendation. He argued that before we could *sua sponte* deny his petition pursuant to the abuse of writ doctrine, he must be given notice and an opportunity to respond. (Doc. 6).

By order dated March 26, 2015, we agreed with McCarthy that notice and opportunity to respond were required. We found, however, that with respect to the challenge to his prison sentence, McCarthy was on notice and did have an opportunity to respond. (Doc. 7 at 3). Accordingly, we adopted Magistrate Judge Carlson's recommendation in part and dismissed that claim. (*Id.*). With respect to his challenges to

the various disciplinary proceedings, we determined that McCarthy had not been given an opportunity to respond. (Doc. 7 at 4). Therefore, we gave McCarthy fourteen days to show cause and prejudice or manifest injustice. (Id.).

On April 8, 2015, McCarthy timely responded to our order. (Doc. 8). He again challenges the disciplinary proceedings, claiming that the proceedings were not fully and fairly litigated, that he was not given an evidentiary hearing, and that all prior rulings were biased and prejudiced. (Doc. 8). Nothing in McCarthy's response demonstrates why he was unable to bring these challenges in any of his previous fifteen habeas petitions filed in this Court. Further, McCarthy makes no showing of prejudice or manifest injustice that will result if we deny his claims. Accordingly, we will adopt the remainder of the Report and Recommendation. We will not issue a certificate of appealability since Petitioner has the right to appeal our order to the Third Circuit without a certificate. See Burkey v. Marberry, 556 F.3d 142, 146 (3d Cir. 2009).

AND NOW, this 13th day of April, 2015, upon consideration of Report and Recommendation of Magistrate Judge Carlson (Doc. 5), and Petitioner's responses thereto (Doc. 6; Doc. 8), it is ORDERED that:

1. The Report and Recommendation of Magistrate Judge Carlson (Doc. 5) is ADOPTED in its entirety.
2. The petition for habeas corpus pursuant to 28 U.S.C. § 2241 is DENIED.
3. The clerk shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge